

AMENDED IN ASSEMBLY MAY 11, 2010

AMENDED IN ASSEMBLY APRIL 29, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2778**

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**Introduced by Committee on Insurance (Solorio (Chair), Blakeslee (Vice Chair), Anderson, Carter, Hagman, Nava, and Niello)**

March 1, 2010

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An act to add and repeal Section 3254.1 of the Unemployment Insurance Code, relating to unemployment insurance.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2778, as amended, Committee on Insurance. Unemployment insurance: voluntary plans.

Existing law provides for the payment of disability compensation for the wage loss sustained by an individual unemployed because of sickness or injury, and finances that compensation by means of employee contributions at specified rates to the Disability Fund. Existing law requires the Director of Employment Development to approve any voluntary plan, subject to specified exceptions, for disability if the director finds that there is at least one employee and that specified requirements are met, including, among other things, that the plan will be in effect for a period of not less than one year, and, thereafter, continuously unless the director finds that the employer or a majority of its employees employed in the state covered by the plan have given notice of withdrawal from the plan.

This bill would, through December 31, 2015, allow the director to approve a voluntary plan that is administered by a small-business-3rd-party administrator, as defined, that administers

voluntary disability plans on behalf of its clients, subject to specified requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Employees of small businesses have not had the same access  
4 under existing law to the superior benefits of voluntary plan  
5 disability insurance, hereafter VPDI, under the Unemployment  
6 Insurance Code as employees of larger employers. Part of the  
7 reason for this lack of access is the administrative difficulty and  
8 expense associated with the application and ongoing operating  
9 compliance with the current law and the Employment Development  
10 Department's procedures.

11 (b) The underground economy is both a threat to employment  
12 benefit funds such as unemployment insurance, workers'  
13 compensation, and disability insurance, and to the competitive  
14 marketplace for employers who comply with California  
15 employment and tax laws.

16 (c) Lowering the administrative costs of compliance with  
17 California's laws will reduce the competitive disincentive to  
18 following the law, and assist in the fight against the underground  
19 economy.

20 SEC. 2. Section 3254.1 is added to the Unemployment  
21 Insurance Code, to read:

22 3254.1. (a) For the purposes of this section,  
23 "small-business-third-party administrator" (hereafter SBTPA),  
24 means an applicant that the director finds meets all of the following  
25 criteria at the time of application:

26 (1) The SBTPA administers voluntary disability plans on behalf  
27 of its clients pursuant to a written agreement in a form and manner  
28 approved by the director.

29 (2) The SBTPA has at least 1,000 California domiciled clients,  
30 80 percent of whom have fewer than 20 employees.

31 (3) The SBTPA processes payroll for its California domiciled  
32 clients.

1 (4) The SBTPA offers workers' compensation insurance to its  
2 California domiciled clients through an affiliated California  
3 domiciled insurance company.

4 (b) Except as modified by this section, "voluntary plan" shall  
5 be defined as, and shall be subject to the same provisions as, a  
6 "voluntary plan," as set forth in Chapter 6 (commencing with  
7 Section 3251) of Part 2 of Division 1.

8 (c) The director may approve a single voluntary plan for all of  
9 an SBTPA's clients and their employees where all of the following  
10 criteria are met:

11 (1) The plan is administered by the SBTPA.

12 (2) The plan establishes a master trust account in a federally  
13 insured national bank that is administered by the SBTPA, but  
14 requires each individual employer that is a client of the SBTPA  
15 to have a subtrust account that reflects that client's employees'  
16 specific plan contributions and is not commingled with any other  
17 funds.

18 (3) (A) If a Voluntary plan does not provide for the assumption  
19 by an admitted disability insurer of the liability of the employer  
20 to pay the benefits afforded by the plan, the director shall not  
21 approve it unless the employer meets the financial security  
22 requirements of Section 3258.

23 (B) In addition to the security required by subparagraph (A),  
24 the director may require additional security from the SBTPA,  
25 consisting of the same types of financial instruments, and deposited  
26 in the same manner as in Section 3258 in an amount determined  
27 by the director to be adequate to pay disability claims of the  
28 SBTPA's clients' employees should the client's subaccount or the  
29 financial security provided in subparagraph (A) be inadequate.

30 (4) The plan meets the requirements of subdivision (g) of Section  
31 3254. The provisions for withdrawal from the plan apply to the  
32 employer and to the SBTPA.

33 (5) The rights afforded to the covered employees are greater  
34 than those provided for in Chapter 2 (commencing with Section  
35 2625), including those provided for in Chapter 7 (commencing  
36 with Section 3300).

37 (6) The plan has been made available to all of the employees  
38 of the employer employed in this state or to all employees at any  
39 one distinct, separate establishment maintained by the employer  
40 in this state. "Employees" as used in this paragraph includes those

1 individuals in partial or other forms of short-time employment and  
2 employees not in employment as the director shall prescribe by  
3 authorized regulations.

4 (7) A majority of the employees of the client employed in this  
5 state or a majority of the employees employed at any one distinct,  
6 separate establishment maintained by the client in this state have  
7 consented to the plan.

8 (8) If the plan provides for insurance, the form of the insurance  
9 policies to be issued has been approved by the Insurance  
10 Commissioner and is to be issued by an admitted disability insurer.

11 (9) The client has consented to the plan and has authorized the  
12 SBTPA to make the payroll deductions required, if any, and deposit  
13 the proceeds in each client's subtrust account.

14 (10) The plan provides for the inclusion of future employees.

15 (11) The amount of deductions from the wages of an employee  
16 of any client in effect for the plan shall not be increased on other  
17 than an anniversary of the effective date of the plan except to the  
18 extent that any increase in the deductions from the wages of an  
19 employee allowed by Section 3260 permits that amount to exceed  
20 the amount of deductions in effect.

21 (12) The approval of the plan or plans will not result in a  
22 substantial selection of risks adverse to the Disability Fund.

23 (d) The department may adopt application forms and procedures  
24 as deemed necessary to ensure compliance with this section, and  
25 shall adopt any application forms and procedures within 60 days  
26 of the enactment of this section.

27 ~~(e) Any existing voluntary plan which has received a conditional~~  
28 ~~letter of approval from the department after January 1, 2009, and~~  
29 ~~is administered by an applicant which can be deemed an SBTPA~~  
30 ~~under this subdivision shall be automatically deemed to constitute~~  
31 ~~a plan under this section.~~

32 (f)

33 (e) It is the intent of the Legislature in enacting paragraph (3)  
34 of subdivision (c) that, in the event of the insolvency of an  
35 employer-client of the SBTPA, or of the SBTPA, the disability  
36 claims against the subaccount of any employer-client arising prior  
37 to the date of the insolvency shall be satisfied by first accessing  
38 the security of the SBTPA, as described in subparagraph (B) of  
39 paragraph (3) of subdivision (c), rather than satisfying the claims  
40 from the Disability Fund.

- 1     ~~(g)~~
- 2     ~~(f)~~ This section shall remain in effect through December 31,
- 3     2015, and as of that date is repealed.

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